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§ 541.208

exercise and does exercise discretion and independent judgment in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretion and independent judgment.

§ 541.208 Directly and closely related.

(a) As indicated in § 541.202, work which is directly and closely related to the performance of the work described in § 541.2 is considered exempt work. Some illustrations may be helpful in clarifying the differences between such work and work which is unrelated or only remotely related to the work described in § 541.2.

(b)(1) For purposes of illustration, the case of a high-salaried management consultant about whose exempt status as an administrative employee there is no doubt will be assumed. The particular employee is employed by a firm of consultants and performs work in which he customarily and regularly exercises discretion and independent judgment. The work consists primarily of analyzing and recommending changes in the business operations of his employer's client. This work fails in the category of exempt work described in § 541.2.

(2) In the course of performing that work, the consultant makes extensive notes recording the flow of work and materials through the office and plant of the client. Standing alone or separated from the primary duty such notemaking would be routine in nature. However, this is work without which the more important work cannot be performed properly. It is "directly and closely related" to the administrative work and is therefore exempt work. Upon his return to the office of his employer the consultant personally types his report and draws, first in rough and then in final form, a proposed table of organization to be submitted with it. Although all this work may not be essential to the performance of his more important work, it is all directly and closely related to that work and should be considered exempt. While it is possible to assign the typing and final drafting to nonexempt employees and in fact it is frequently the practice to do so, it is not required as

a condition of exemption that it be so delegated.

(3) Finally, if because this particular employee has a special skill in such work, he also drafts tables or organization proposed by other consultants, he would then be performing routine work wholly unrelated, or at best only remotely related, to his more important work. Under such conditions, the drafting is nonexempt.

(c) Another illustration is the credit manager who makes and administers the credit policy of his employer. Establishing credit limits for customers and authorizing the shipment of orders on credit, including the decisions to exceed or otherwise vary these limits in the case of particular customers, would be exempt work of the kind specifically described in § 541.2. Work which is directly and closely related to these exempt duties may include such activities as checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis and writing letters giving credit data and experience to other employers or credit agencies. On the other hand, any general office or bookkeeping work is nonexempt work. For instance, posting to the accounts receivable ledger would be only remotely related to his administrative work and must be considered nonexempt.

(d) One phase of the work of an administrative assistant to a bona fide executive or administrative employee provides another illustration. The work of determining whether to answer correspondence personally, call it to his superior's attention, or route it to someone else for reply requires the exercise of discretion and independent judgment and is exempt work of the kind described in § 541.2. Opening the mail for the purpose of reading it to make the decisions indicated will be directly and closely related to the administrative work described. However, merely opening mail and placing it unread before his superior or some other person would be related only remotely, if at all, to any work requiring the exercise of discretion and independent judgment.

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(e) The following additional examples may also be of value in applying principles. A traffic manager is employed to handle the company's transportation problems. The exempt work performed by such an employee would include planning the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and transportation facilities, negotiating with carriers for adjustments for delays to merchandise in transit, making the necessary rearrangements resulting from delays, damages, irregularities in transit. This employee may also spend part of his time at city orders (for local deliveries) on the telephone. The order-taking is a routine function not directly and closely related to the exempt work and must be considered nonexempt.

(f) An office manager who does supervise two or more employees would not meet the requirements for exemption as an executive employee but possibly qualify for exemption as an administrative employee. Such an employee may perform administrative duties, such as the executive of the employer's credit policy, the manager of the company's traffic, purchase and other responsible office work requiring the customary and regular exercise of discretion and judgment which are clearly exempt. On the other hand, this office manager may perform all the bookkeeping, prepare the confidential or regular payrolls, and put out monthly statements of account. These latter activities are not directly and closely related to the exempt duties and are not exempt.

§ 541.209 Percentage limitations on nonexempt work.

(a) Under § 541.2(d), an employee does not qualify for exemption as an administrative employee if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 20 percent, of his hours worked in a workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in § 541.2 (a) through (c).

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§ 541.211

(e) The following additional examples may also be of value in applying these principles. A traffic manager is employed to handle the company's transportation problems. The exempt work performed by such an employee would include planning the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise in transit and making the necessary rearrangements resulting from delays, damages, or irregularities in transit. This employee may also spend part of his time taking city orders (for local deliveries) over the telephone. The order-taking is a routine function not directly and closely related to the exempt work and must be considered nonexempt.

(f) An office manager who does not supervise two or more employees would not meet the requirements for exemption as an executive employee but may possibly qualify for exemption as an administrative employee. Such an employee may perform administrative duties, such as the executive of the employer's credit policy, the management of the company's traffic, purchasing, and other responsible office work requiring the customary and regular exercise of discretion and judgment, which are clearly exempt. On the other hand, this office manager may perform all the bookkeeping, prepare the confidential or regular payrolls, and send out monthly statements of account. These latter activities are not directly and closely related to the exempt functions and are not exempt.

§ 541.209 Percentage limitations on nonexempt work.

(a) Under § 541.2(d), an employee will not qualify for exemption as an administrative employee if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in § 541.2 (a) through (c).

(b) This test is applied on a work-week basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(c) The tolerance for nonexempt work allows the performance of nonexempt manual or nonmanual work within the percentages allowed for all types of nonexempt work.

(d) Refer to § 541.112(b) for the definition of a retail or service establishment as this term is used in paragraph (a) of this section.

§ 541.310 Trainees, administrative.

The exemption is applicable to an employee employed in a bona fide administrative capacity and does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee.

§ 541.211 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than \$155 a week, exclusive of board, lodging or other facilities, is required for exemption as an administrative employee. The requirement will be met if the employee is compensated biweekly on a salary basis of \$310, semi-monthly on a salary basis of \$335.84, or monthly on a salary basis of \$671.67.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an administrative employee is \$125 per week for other than an employee of the Federal Government.

(c) In the case of academic administrative personnel, the compensation requirement for exemption as an administrative employee may be met either by the payment described in paragraph (a) or (b) of this section, whichever is applicable, or alternatively by compensation on a salary basis in an amount which is at least equal to the entrance salary for teachers in the school system, or educational establishment or institution by which the employee is employed.

(d) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and

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clear. On the other hand, the regulations in subpart A of this part do not prohibit the sale of such facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

[38 FR 11290, May 7, 1973, as amended at 40 FR 7093, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Paragraphs (a) and (b) in § 541.211 were revised at 46 FR 3014, Jan. 13, 1981. In accordance with the President's Memorandum of January 23, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of paragraphs (a) and (b) set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

§ 541.211 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than \$225 per week beginning February 13, 1981 and \$250 per week beginning February 13, 1983, exclusive of board, lodging or other facilities, is required for exemption as an administrative employee. For example, based on \$250 a week, the requirement will be met if the employee is compensated biweekly on a salary basis of \$500, semi-monthly on a salary basis of \$541.67 or monthly on a salary basis of \$1,083.33.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an administrative employee is \$160 per week beginning February 13, 1981 and \$200 per week beginning February 13, 1983 for other than an employee of the Federal Government.

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§ 541.212 Salary basis.

The explanation of the salary basis of payment made in § 541.118 in connection with the definition of "executive" is also applicable in the definition of "administrative."

§ 541.213 Fee basis.

The requirements for exemption as an administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis. For a discussion of payment of a fee basis, see § 541.313.

29 CFR Ch. V (7-1-02 Edition)**§ 541.214 Special proviso for high salaried administrative employees.**

(a) Except as otherwise noted in paragraph (b) of this section, § 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee having such work as his or her primary duty is deemed to meet all the requirements in § 541.2 (a) through (e). If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under § 541.2 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.2(e) applies to those administrative employees other than an employee of the Federal Government who are compensated on a salary or fee basis or not less than \$200 per week.

[40 FR 7093, Feb. 19, 1975]

EFFECTIVE DATE NOTE: Section 541.214 was revised at 46 FR 3015, Jan. 13, 1981. In accordance with the President's Memorandum of January 23, 1981 (46 FR 11227, Feb. 6, 1981), the effective date was postponed indefinitely at 46 FR 11972, Feb. 12, 1981.

The text of § 541.214 set forth above remains in effect pending further action by the issuing agency. The text of the postponed regulation appears below.

§ 541.214 Special proviso for high salaried administrative employees.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of

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not less than \$200 per week beginning February 13, 1981 and \$245 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or the performance of functions in the administration of a school, educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee having such work as his or her primary duty is deemed to meet all the requirements in § 541.2 (a) through (e). If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under § 541.2 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.2(e) applies to those administrative employees other than an employee of the Federal Government who are compensated on a salary or fee basis or not less than \$200 per week beginning February 13, 1981 and \$245 per week beginning February 13, 1983.

§ 541.215 Elementary or secondary schools and other educational establishments and institutions.

To be considered for exemption as an administrative employee, the employee must be in connection with the operation of an elementary or secondary school system, an institution of higher education, or other educational establishment or institution. 3(v) and 3(w) of the Act define elementary and secondary schools as day or residential schools which provide elementary or secondary education, as determined under the laws of the State. Under the laws of most States, elementary education includes the curriculum for grades 1 through 12; under many States it also includes the introductory or kindergarten curriculum. Such education may include also some States may include also school programs in elementary and junior college curriculum in secondary education. Above the secondary school level, any event included in the provisions of higher educational institutions of higher education, such as schools for mentally or physically handicapped or gifted children.

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not less than \$320 per week beginning February 13, 1981 and \$345 per week beginning February 13, 1983, exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee having such work as his or her primary duty is deemed to meet all the requirements in § 541.2 (a) through (e). If an employee qualifies for exemption under this provision, it is not necessary to test the employee's qualifications in detail under § 541.2 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.2(c) applies to those administrative employees other than an employee of the Federal Government who are compensated on a salary or fee basis or not less than \$260 per week beginning February 13, 1981 and \$285 per week beginning February 13, 1983.

§ 541.215 Elementary or secondary schools and other educational establishments and institutions.

To be considered for exemption as employed in the capacity of academic administrative personnel, the employment must be in connection with the operation of an elementary or secondary school system, an institution of higher education, or other educational establishment or institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools which provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may include also nursery school programs in elementary education and junior college curriculums in secondary education. Education above the secondary school level is in any event included in the programs of institutions of higher education. Special schools for mentally or physically handicapped or gifted children are in-

cluded among the educational establishments in which teachers and academic administrative personnel may qualify for the administrative exemption, regardless of any classification of such schools as elementary, secondary, or higher. Also, for purposes of the exemption, no distinction is drawn between public or private schools. Accordingly, the classification for other purposes of the school system, or educational establishment or institution, is ordinarily not a matter requiring consideration in a determination of whether the exemption applies. If the work is that of a teacher or academic personnel as defined in the regulations, in such an educational system, establishment, or institution, and if the other requirement of the regulations, are met, the level of instruction involved and the status of the school as public or private or operated for profit or not for profit will not alter the availability of the exemption.

EMPLOYEE EMPLOYED IN A BONA FIDE PROFESSIONAL CAPACITY

§ 541.300 General.

The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. It also includes the artistic professions, such as acting or music. Since the test of the bona fide professional capacity of such employment is different in character from the test for persons in the learned professions, an alternative test for such employees is contained in the regulations, in addition to the requirements common to both groups.

[38 FR 11390, May 7, 1973, Redesignated at 57 FR 46744, Oct. 2, 1992.]

§ 541.301 Learned professions.

(a) The "learned" professions are described in § 541.3(a)(1) as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the

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performance of routine mental, manual, or physical processes.

(b) The first element in the requirement is that the knowledge be of an advanced type. Thus, generally speaking, it must be knowledge which cannot be attained at the high school level.

(c) Second, it must be knowledge in a field of science or learning. This serves to distinguish the professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The requisite knowledge, in the third place, must be customarily acquired by a prolonged course of specialized intellectual instruction and study. Here it should be noted that the word "customarily" has been used to meet a specific problem occurring in many industries. As is well known, even in the classical profession of law, there are still a few practitioners who have gained their knowledge by home study and experience. Characteristically, the members of the profession are graduates of law schools, but some few of their fellow professionals whose status is equal to theirs, whose attainments are the same, and whose work is the same did not enjoy that opportunity. Such persons are not barred from the exemption. The word "customarily" implies that in the vast majority of cases the specific academic training is a prerequisite for entrance into the profession. It makes the exemption available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry, etc., but it does not include the members of such quasi-professions as journalism in which the bulk of the employees have acquired their skill by experience rather than by any formal specialized training. It should be noted also that many employees in these quasi-professions may qualify for exemption under other sections of the regulations in subpart A of this part or under the alternative paragraph of the "professional" definition applicable to the artistic fields.

(e)(1) Generally speaking the professions which meet the requirement for a prolonged course of specialized intellectual instruction and study include

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law, medicine, nursing, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical, and biological sciences, including pharmacy and registered or certified medical technology and so forth. The typical symbol of the professional training and the best prima facie evidence of its possession is, of course, the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not universal) prerequisite. In the case of registered (or certified) medical technologists, successful completion of 3 academic years of preprofessional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association will be recognized as a prolonged course of specialized intellectual instruction and study. Registered nurses have traditionally been recognized as professional employees by the Division in its enforcement of the act. Although, in some cases, the course of study has become shortened (but more concentrated), nurses who are registered by the appropriate State examining board will continue to be recognized as having met the requirement of § 541.3(a)(1) of the regulations.

(2) The areas in which professional exemptions may be available are expanding. As knowledge is developed, academic training is broadened, degrees are offered in new and diverse fields, specialties are created and the true specialist, so trained, who is given new and greater responsibilities, comes closer to meeting the tests. However, just as an excellent legal stenographer is not a lawyer, these technical specialists must be more than highly skilled technicians. Many employees in industry rise to executive or administrative positions by their natural ability and good commonsense, combined with long experience with a company, without the aid of a college education or degree in any area. A college education would perhaps give an executive or administrator a more cultured and polished approach but the necessary know-how for doing the executive job

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would depend upon the person's inherent talent. The professional on the other hand, attains after a prolonged course of intellectual instruction and study.

(f) Many accountants are professional employees (whether they are employed by accounting firms or by other enterprises). (Some accountants qualify for exemption as administrative employees.) Exemption of accountants, as of other occupational groups, must be determined on the basis of the individual employee's qualifications and the other criteria. It has been the Division's experience that certified public accountants who meet the salary requirements of the regulations will, in usual cases, meet the requirements for the professional exemption. Similarly, accountants who are certified public accountants may be exempt as professional employees if they actually perform work which requires the consistent exercise of judgment and judgment and other tests prescribed in the "professional" employee, clerks, junior accountants, accountants, on the other hand, usually perform a great deal of work which is not an essential part of the professional work which they may perform. These facts are found such that they are not exempt. The title "accountant," however, is not a bar to failure to qualify for exemption. The title "accountant" would not necessarily preclude exemption if the employee is exempt.

(g)(1) A requisite for exemption as a teacher is the condition that the employee is "employed and engaged in this activity as a teacher in a school system, or educational institution, or institution by which he is employed."

(2) "Employed and engaged as a teacher" denotes employment in the named occupational category as a requirement for exemption. Teaching consists of activities of teaching, tutoring, lecturing, and the like, and the activity of imparting knowledge.

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after a prolonged course of specialized
intellectual instruction and study.

(1) Many accountants are exempt as
professional employees (regardless of
whether they are employed by public
accounting firms or by other types of
enterprises). (Some accountants may
qualify for exemption as bona fide ad-
ministrative employees.) However, ex-
emption of accountants, as in the case
of other occupational groups (see
§ 541.308), must be determined on the
basis of the individual employee's du-
ties and the other criteria in the regu-
lations. It has been the Divisions' expe-
rience that certified public account-
ants who meet the salary requirement
of the regulations will, except in un-
usual cases, meet the requirements of
the professional exemption since they
meet the tests contained in § 541.3.
Similarly, accountants who are not
certified public accountants may also
be exempt as professional employees if
they actually perform work which re-
quires the consistent exercise of discre-
tion and judgment and otherwise meet
the tests prescribed in the definition of
"professional" employee. Accounting
clerks, junior accountants, and other
accountants, on the other hand, nor-
mally perform a great deal of routine
work which is not an essential part of
and necessarily incident to any profes-
sional work which they may do. Where
these facts are found such accountants
are not exempt. The title "Junior Ac-
countant," however, is not determina-
tive of failure to qualify for exemption
any more than the title "Senior Ac-
countant" would necessarily imply
that the employee is exempt.

(g)(1) A requisite for exemption as a
teacher is the condition that the em-
ployee is "employed and engaged" in
this activity as a teacher in the school
system, or educational establishment
or institution by which he is employed.
(2) "Employed and engaged as a
teacher" denotes employment and en-
gagement in the named specific occu-
pational category as a requisite for ex-
emption. Teaching consists of the ac-
tivities of teaching, tutoring, instruct-
ing, lecturing, and the like in the ac-
tivity of imparting knowledge. Teach-

ing personnel may include the fol-
lowing (although not necessarily lim-
ited to): Regular academic teachers;
teachers of kindergarten or nursery
school pupils or of gifted or handi-
capped children; teachers of skilled and
semiskilled trades and occupations;
teachers engaged in automobile driving
instruction; aircraft flight instructors;
home economics teachers; and vocal or
instrumental music instructors. Those
faculty members who are engaged as
teachers but also spend a considerable
amount of their time in extra-
curricular activities such as coaching
athletic teams or acting as moderators
or advisers in such areas as drama,
forensics, or journalism are engaged in
teaching. Such activities are a recog-
nized part of the school's responsibility
in contributing to the educational de-
velopment of the student.

(3) Within the public schools of all
the States, certificates, whether condi-
tional or unconditional, have become a
uniform requirement for employment
as a teacher at the elementary and sec-
ondary levels. The possession of an ele-
mentary or secondary teacher's certifi-
cate provide a uniform means of identi-
fying the individuals contemplated as
being within the scope of the exemp-
tion provided by the statutory lan-
guage and defined in § 541.3(a)(3) with
respect to all teachers employed in
public schools and those private
schools who possess State certificates.
However, the private schools of all the
States are not uniform in requiring a
certificate for employment as an ele-
mentary or secondary school teacher
and teacher's certificates are not gen-
erally necessary for employment as a
teacher in institutions of higher edu-
cation or other educational establish-
ments which rely on other qualifica-
tion standards. Therefore, a teacher
who is not certified but is engaged in
teaching in such a school may be con-
sidered for exemption provided that
such teacher is employed as a teacher
by the employing school or school sys-
tem and satisfies the other require-
ments of § 541.3.

(4) Whether certification is condi-
tional or unconditional will not affect
the determination as to employment
within the scope of the exemption con-
templated by this section. There is no

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standard terminology within the States referring to the different kinds of certificates. The meanings of such labels as permanent, standard, provisional, temporary, emergency, professional, highest standard, limited, and unlimited vary widely. For the purpose of this section, the terminology affixed by the particular State in designating the certificates does not affect the determination of the exempt status of the individual.

[38 FR 11390, Mar. 7, 1973. Redesignated and amended at 57 FR 46744, Oct. 9, 1992.]

§ 541.302 Artistic professions.

(a) The requirements concerning the character of the artistic type of professional work are contained in § 541.302(a)(2). Work of this type is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

(b) The work must be "in a recognized field of artistic endeavor." This includes such fields as music, writing, the theater, and the plastic and graphic arts.

(c)(1) The work must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training. In the field of music there should be little difficulty in ascertaining the application of the requirement. Musicians, composers, conductors, soloists, all are engaged in original and creative work within the sense of this definition. In the plastic and graphic arts the requirement is, generally speaking, met by painters who at most are given the subject matter of their painting. It is similarly met by cartoonists who are merely told the title or underlying concept of a cartoon and then must rely on their own creative powers to express the concept. It would not normally be met by a person who is employed as a copyist, or as an "animator" of motion-picture cartoons, or as a retoucher of photographs since it is not believed that such work is properly described as creative in character.

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(2) In the field of writing the distinction is perhaps more difficult to draw. Obviously the requirement is met by essayists or novelists or scenario writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed). The requirement would also be met, generally speaking, by persons holding the more responsible writing positions in advertising agencies.

(d) Another requirement is that the employee be engaged in work "the result of which depends primarily on the invention, imagination, or talent of the employee." This requirement is easily met by a person employed as an actor, or a singer, or a violinist, or a short-story writer. In the case of newspaper employees the distinction here is similar to the distinction observed above in connection with the requirement that the work be "original and creative in character." Obviously the majority of reporters do work which depends primarily on intelligence, diligence, and accuracy. It is the minority whose work depends primarily on "invention, imaging, or talent." On the other hand, this requirement will normally be met by actors, musicians, painters, and other artists.

(e)(1) The determination of the exempt or nonexempt status of radio and television announcers as professional employees has been relatively difficult because of the merging of the artistic aspects of the job with the commercial. There is considerable variation in the type of work performed by various announcers, ranging from predominantly routine to predominantly exempt work. The wide variation in earnings as between individual announcers, from the highly paid "name" announcer on a national network who is greatly in demand by sponsors to the staff announcer paid a comparatively small salary in a small station, indicates not only great differences in personality, voice and manner, but also in some inherent special ability or talent which, while extremely difficult to define, is nevertheless real.

(2) The duties which many announcers are called upon to perform include: Functioning as a master of ceremonies;

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playing dramatic, comic parts in a program; introducing farm, fashion, economics programs; covering events, such as sports, which the announcer must to ad lib and describe current events; and acting as commentator. Such work, exempt. Work such as identification and time-nouncing the names of similar routine work. In the field of endeavor, the status of an bona fide professional, in large part dependent upon duties are original and character, and whether invention, imagination or termination of whether announcer is exempt as employee must be based upon duties and the exempt and nonexempt work as well as his compensation.

(3) The field of journalism plays many exempt as nonexempt employees or similar job titles. News and reporters are the categories of employment found.

(4) Newspaper writers, rare exceptions in certain fields, do not meet the requirements of § 541.302(a)(2) for professional employee "learned" type. Exempt paper writers as professional is normally available for provisions for professional of the "artistic" type. Nothing of the exempt type can be "predominantly original in character," which is analytical, not highly individualized, is not creative in nature, is not fiction to the extent that found on a newspaper is considered as exempt work. Writers commonly perform which is original and of the meaning of § 541.302. Writers, columnists, and "flight" writers of analytical, pretative articles.